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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,191	10/18/2001	Jerrold V. Hauck	42390P5378C	3407

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EXAMINER

NGUYEN, STEVEN H D

ART UNIT PAPER NUMBER

2665

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/045,191	Applicant(s) HAUCK ET AL.	
	Examiner Steven HD Nguyen	Art Unit 2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/18/01</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: Page 1, Sec 1, line 2, before "entitled", please insert "now US patent 6411628).

Appropriate correction is required.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-3 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 9, 12 and 16-17 of U.S. Patent No. 6411628.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the application's claims merely broaden the scope of the patented claims by not claiming some elements (preparing the nominal root of claim 1 of the patent as compared with claim 1 of the application; the grant token ... is identified of claim 9 of the patent as compared with claim 2 of the application and wherein if the nominal ... arbitration information of the claim 12 of the patent as compared with claim 3 of the application; wherein the nominal ... next fairness

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interval of the claim 16 as compared with claim 3 of the application; wherein the nominal ... packet of a subaction of claim 17 of the patent as compared with claim 3 of the application). The application's claims are nearly identical in every other respect to the patent claims. Therefore, the application's claims are simply broader versions of the patented claims. It is the examiner's position that broadening the patented claims by not claiming some of claim elements of the patented claims would have been obvious to one of ordinary skill in the art in view of the patented claims. It is important to note that the instant application is a continuation of the application which yielded the patent (US Pat 6411628) used herein as the basis for the obviousness type of double patenting rejection. The applicant is attempting to broaden the parent application's claims by eliminating some of the claim elements in the continuation at issue here. If allowed, the application at bar would unjustly extend applicant patent protection beyond the statutory period while, at the same time, granting broader protection to the application.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Ishizuka (USP 4675671).

Ishizuka discloses a step of establishing a node as a nominal root node (Fig 1, Ref A), the nominal root node being a node with a right to transmit a packet on a bus; dynamically changing the nominal root node (Fig 1, Ref B) responsive to a change in right to transmit on the bus (See Col 3, lines 54-65).

6. Claims 1-2 is rejected under 35 U.S.C. 102(e) as being anticipated by Duckwall (USP 5784648).

Regarding claim 1, Duckwall discloses a step of establishing a node as a nominal root node (Fig 9b, Ref 7 is a root node), the nominal root node being a node with a right to transmit a packet on a bus; dynamically changing the nominal root node (Fig 9b, Ref 7 is a root node which passes a token to the node 3 which acts as a local root node) responsive to a change in right to transmit on the bus (See Col 10, lines 9-36 and col. 7, lines 60 to col. 8 lines 25).

Regarding claim 2, Duckwall discloses an apparatus comprises a port, PHY (Fig 1, Ref 21) for encoding a last packet of a subaction for transmission on a serial bus (Col. 8, lines 35-37), the PHY arbitrating a next access to the serial bus (Col. 8, lines 19-23) and attaching a grant token to the last packet of the subaction to be transmitted out to highest priority port (col. 8, lines 2-11, the nodes are assigned a predetermined sequence method and col. 9, lines 10-16, node 7 has a highest priority because it's a root node).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Duckwall (USP 5784648) in view of Oprescu (USP 5394556).

Duckwall discloses a plurality of nodes (Fig 2) coupled together in a tree topology by the serial bus wherein a node transmitting a current packet is a nominal root node of the tree topology (Node 3 send a packet after it receives a token from node 7); nodes must repeat transmitting a current arbitration information to the bus for gain access to the bus (col. 10, lines 16-17, nodes 4-5 transmits an arbitration information to node 7). However, Duckwall does not disclose a serial bus is a full duplex bus. In the same field of endeavor, Oprescu discloses a Full duplex bus (see col. 6, lines 14-17).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply full duplex bus as disclosed by Oprescu into Duckwall's system. The motivation would have been to obtain a fly by serial bus arbitration for the nodes.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (571) 272-3159. The examiner can normally be reached on 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on (571) 272-3155. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Steven HD Nguyen', with a stylized, overlapping circular flourish.

Steven HD Nguyen
Primary Examiner
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5/10/05